

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 15-1638

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., December 14, 2015, on the application of **DAVID A. and RITA G. SIRIGNANO** ("Applicants"). The Applicants are requesting five variances of the Shoreline Development Buffer to permit the following: (1) vertical expansion resulting from increasing the total height of the dwelling from 17 feet above finished floor ("AFF") to 26'-8" AFF; (2) construction of a 2'-6" x 14' addition for a screened porch to within 78' from mean high water ("MHW"); (3) construction of a 9' x 50'-3" covered porch to within 78'-1" from MHW; (4) construction of a 15 sq. ft. (2'-1½" deep) addition to an existing sunroom to within 95' from MHW; and (5) reconfiguration of the existing driveway and patio areas that encroach to within 59'-7" of MHW resulting in a net lot coverage decrease of 828 sq. ft. within the Buffer. The Applicants are also requesting a variance of the required 50-foot side yard setback to permit vertical expansion of the portion of the home that encroaches on that setback to increase the structure height at the setback line by 8'-6". The proposed vertical expansion will not be any closer to the property line than the existing structure. The property is located at 24755 Deepwater Point Drive, St. Michaels, Maryland 21663 in the Rural Residential (RR) zone. It is owned by the Applicants. The request is made in accordance with Chapter 190 Zoning, Article II, §190-14; Article VI, §190-139; and Article IX, §190-182 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Margaret Young, and Jeffrey Adelman. Jeremy Rothwell, Planner I, Talbot County, appeared on behalf of the County Office of Planning and Zoning. The Applicants, David and Rita Sirignano, 7902 Old Marsh Lane, Alexandria, Virginia 22315, were present at the hearing and were represented by Ryan D. Showalter, Esquire, 101 Bay Street, Suite 2, Easton, Maryland 21601. Lars

Erickson, East Bay Construction Services, LLC, P.O. Box 35, Newcomb, Maryland 21653, appeared on behalf of the Applicants. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that each of the members of the Board had visited the site individually.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for Critical Area and Non Critical Area Variances with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of Critical Area and Non Critical Area variance standards with the Applicants' response to each applicable requirement as Attachments B and C.
7. Staff Report.
8. Sign Maintenance Agreement.
9. Site plans prepared by McCrone.
10. Construction/Elevation Plan/Floor Plans.
11. Letter from Critical Area Commission, dated December 1, 2015.
12. Independent Disclosure and Acknowledgement Form.
13. Aerial photograph of property.
14. Critical Area Lot Coverage Worksheets.
15. Photographs submitted by Applicants showing existing structure and roof line measurements (four pages).
16. Photographs taken by staff during site visit on November 18, 2015.

Mr. Showalter introduced his clients and gave a brief overview of the requested variances. He said that each of the variances is specifically detailed in the exhibits. However, since five of the variances

relate to the house and the remaining relates to the drive, he suggested the Applicants present their evidence by explaining the whole proposed project and then address any questions concerning specific variances.

The first witness was Mr. Sirignano. He testified that he and his wife purchased the property in 2014. A former owner constructed the house in about 1980. The Applicants have not modified the property lines or made any changes to the structures on the property. He submitted a copy of their deed to the property. It was admitted as Applicants' Exhibit No. 1.

Mr. Sirignano said that the property will be their retirement home. His wife's mother will also be living with them. They plan to set up a small separate living area for her on the first floor of their home. He offered two aerial photographs of the property. The first was taken during the late fall and the second was taken in the summer. They were admitted as Applicants' Exhibit No. 2.

The next witness was Mr. Erickson. He testified that the Applicants' main reason for their redesign and expansion is to provide a separate living area for the mother-in-law, thus the two master suites, one each on the first and second floors. The Applicants attempted to keep within the footprint of the existing structure. However, to make some of the new rooms a reasonable size they have "bumped" the footprint out slightly in several places. Those areas on the waterfront side of the existing structure are no closer to the shoreline. An existing geothermal well limits any expansion on the garage side of their property.

Mr. Erickson then described each of the separate variances. The first relates to the Applicants' desire to increase the interior ceiling height from eight feet to nine feet. For structural integrity such a change requires replacement of the existing wall frames. He said that most new residential construction includes nine or ten foot ceilings.

Variance two relates to a planned screened porch that will be 2'6" closer to the shoreline (but still no closer than other parts of the existing structure). The porch will use a part of the existing garage but leaving enough of the garage to be usable as a garage.

The third variance is for a new covered porch on the water side of the house. It will provide protection and shading to the living area of the home from the setting sun. It will also provide a small transition area from the interior to the yard. It will not be closer to the shoreline than the existing structure.

The fourth variance is for a small expansion of the sun room for the mother-in-law living area. It will provide a small sitting area for that living space.

Variance number five relates to a redesign of the existing patio and drive. The Martingham subdivision has a covenant that no garage door may face the street side of a residence. The existing entrance to the garage is on the waterfront side of the house. That is why the existing drive is so close to the shoreline. The Applicants have designed a new side entrance to the garage which will enable them to remove a substantial portion of the drive that is in the buffer close to the shoreline. They also plan to move a patio that is now where the mother-in-law's sun room will be located.

The sixth variance is a side yard variance. It is a vertical expansion over the existing footprint of the house to provide for a sloped roof from the new shed dormer expanding the second floor living area.

Mr. Erickson said the Applicants attempted to keep the expansion of the structure to a minimum so that it would qualify for consideration as an administrative variance. However, the proposed increase in the ceiling height meant that the existing walls have to be completely replaced from the floor up. As a consequence the redesign and expansion does not qualify for the administrative variance process.

The house at its closest point is about 77 feet, 2 inches from the shoreline. About 35% of the existing home is within the 100-foot shoreline buffer. The current patio, with the exception of a small

portion, is within the buffer. That portion of the existing driveway that the Applicants propose to remove is within the buffer. About 40% of the entire lot is within the buffer.

The existing total lot coverage is just over 10%. The proposed variance will reduce the lot coverage in the buffer by 526 square feet. There will be a 1,802 square feet increase of lot coverage outside of the buffer. The resulting total lot coverage will be below the 15% coverage limitation. As part of the project the Applicants will move a shed currently within the buffer to another location outside the buffer.

In response to a question from a Board member Mr. Erickson described the lot as relatively flat. He said that one of the benefits of the relocation of the drive away from the shoreline buffer is an improvement of the natural filtering of any driveway runoff.

Mr. Erickson then gave detailed and specific descriptions of each of the proposed variances and related each to the site plans included with the application (Board Exhibit Nos. 9 and 10).

In response to a question from a Board member Mr. Rothwell explained that the covered porch area is not considered new gross floor area.

In response to a question about the Critical Area Commission's comments on the proposed patio Mr. Sirignano said that the patio is to provide space for an outdoor family dining area. His mother-in-law uses a walker and can only negotiate on flat surfaces.

A Board member questioned drainage that might occur from the driveway area. Mr. Erickson said that the project will not require regrading. Because of existing vegetation along the property border the project will not increase drainage onto the neighboring property.

He said that the project will not require much vegetation to be removed. The Applicants will have to prepare a buffer management plan that will provide for mitigation for all new development less any credit for the relocation of the shed.

Mr. Rothwell estimated that the project will require about 2,000 square feet of buffer mitigation. He also commented on runoff from the driveway. Mr. Showalter also addressed the question of mitigation. He said the type of mitigation plantings will be somewhat limited by the restrictive covenants of the subdivision.

Responding to a question from a Board member Mr. Rothwell said that any trees removed because of the project will have to be replaced in addition to any other required mitigation. He also explained the staff position contained in the staff report (Board's Exhibit No. 7).

Mr. Showalter confirmed that all of the walls of the existing structure will be removed and replaced as part of the project.

Mr. Showalter said that the neighbor on the garage side of the house supports the proposed renovations. His email to that effect was admitted as Applicants' Exhibit No. 3. Mr. Erickson said that the Martingham Architectural Committee has no objection to the proposal.

No one appeared in opposition to the application.

There being no further evidence the Board considered the application and, after some discussion and upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Certain unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop or use the property. Despite the number of variances proposed the Applicants are actually planning a modest expansion of their home. They are constrained by the location of the current house as well as the restrictive covenants of the subdivision.

3. The granting of the variance is not based upon circumstances which are self-created or self-imposed. A former owner constructed the house and other improvements before the State and County imposed more restrictive limits on building near the shoreline.
4. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.
5. The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The overall impact on neighboring properties will be negligible.
6. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship.
7. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the Code would result in unwarranted hardship. (See finding 2 above.)
8. A literal interpretation of the Critical Area requirements of the Code will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district. Other waterfront property owners generally enjoy the right to have modest outdoor living spaces on the water side of their homes and properties.
9. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the Code to other owners of lands or structures within the same zoning district.
10. The variance request is not based on conditions or circumstances which are the result of actions by the Applicants, including the commencement of development activity before an application for variance has been filed, nor does the request arise from any condition

relating to land or building use, either permitted or nonconforming, on any neighboring property.

11. The granting of the variances will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program. In fact, the proposed removal of impervious surface close to the shoreline along with new mitigation will likely improve the property's impact on the environment.
12. The variances do not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
13. It is not possible for the Applicant to reconfigure the lot to comply with the Code without the variances.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicants, **DAVID A. and RITA G. SIRIGNANO** (Appeal No. 15-1638) are **GRANTED** the requested variances consistent with the evidence provided the Board of Appeals and subject to the following conditions:

1. The Applicants shall be required to remove that lot coverage (driveway, sidewalk, patio, etc.) which is annotated on the site plan to be removed.
2. The Applicants shall make applications to and follow all of the rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections regarding new construction.
3. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.



4. The Applicants shall be required to submit for approval and comply with a Buffer Management Plan to address any mitigation required throughout the construction.
5. The Applicants shall be required to submit for approval, comply with, and maintain a Buffer Management Plan which will provide for additional natural vegetation in the buffer of an area of three times the extent of the approved disturbance or on the property if planting in the buffer cannot be reasonably accomplished. The plan must specifically address and provide for the mitigation of runoff that might occur from the new proposed driveway, particularly as such runoff might impact the neighboring property and the general water quality of the nearby tributaries of the Chesapeake Bay. A Buffer Management Plan application may be obtained through the Department of Planning and Zoning.


The vote of the Board was five to zero to grant the variances as requested.

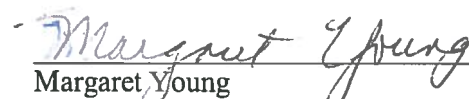
GIVEN OVER OUR HANDS, this 27th day of January, 2016.

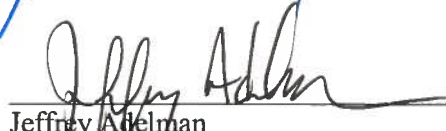
**TALBOT COUNTY BOARD OF APPEALS**

  
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